

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

SEP 30 2011

REPLY TO THE ATTENTION OF:

LU-9J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jeffrey Kehne
Hill & Kehne, LLC
2300 Wisconsin Avenue, NW, Suite 300
Washington, DC 20007

Re: Executed Performance-based Voluntary Agreement
Toledo Landfill, 1455 West Alexis Road, Toledo, OH
OHD 005 041 371

Dear Mr. Kehne:

I am enclosing a fully executed copy of the Performance-based Voluntary Agreement (PVA) covering the corrective action for past releases of hazardous contaminants from the subject facility. This Performance-based Agreement will provide the flexibility that you need to complete the work expeditiously. In addition, we expect that it will lead to better communication between our two organizations and the public. We look forward to working cooperatively with you and your staff on this project.

In accordance with Section IV of the agreement, I am hereby designating Peter Ramanauskas as the U.S. EPA project manager for this project. If you have any questions, please contact him at (312) 886-7890 or ramanauskas.peter@epa.gov.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jose G. Cisneros", is written over a horizontal line.

Jose G. Cisneros, Chief
Remediation and Reuse Branch
Land and Chemicals Division

Enclosure

Performance Based Corrective Action Agreement Between The United States Environmental Protection Agency and Revitalizing Auto Communities Environmental Response Trust

I. Purpose

The United States Environmental Protection Agency (“U.S. EPA”) and Revitalizing Auto Communities Environmental Response Trust (“RACER”), each separately a Party and collectively referred to as the Parties, establish this Agreement to enable RACER to work to investigate, and as necessary, stabilize and remediate releases of hazardous wastes or hazardous constituents at or from the Toledo 103C Landfill (the “Site”) that may present an unacceptable risk to human health or the environment. RACER’s actions with respect to the Site are subject to the terms, provisions and limitations set forth in the Environmental Response Trust Consent Decree and Settlement Agreement Among Debtors, the Environmental Response Trust Administrative Trustee, the United States, [fourteen States] and the Saint Regis Mohawk Tribe, Case No. 09-50026 (REG) in the United States Bankruptcy Court for the Southern District of New York (“Consent Decree”). The Parties believe that RACER will appropriately, efficiently and effectively investigate and, as necessary, remediate the Site on an accelerated basis by following the procedures and guidelines in this Agreement. This Agreement will have fulfilled its purpose and will terminate upon written acknowledgment by U.S. EPA that RACER has completed its corrective action obligations under RCRA at the Site.

II. Background

The Former General Motors Power Train (“GMPT”) Toledo 103C Landfill is located at 1455 West Alexis Road on a portion of the 186-acre GMPT Toledo plant property in Toledo, Ohio. The Site consists of approximately 45 acres of plant property south of the main manufacturing buildings. There are currently no structures on the Site. The Site contains a 5-acre Former Disposal Area (“FDA”), a Former Stormwater Pond (“FSP”), a Soil Stockpile Area, the Southwest Area, and the Area South of Silver Creek/Area West of Former Disposal Area. The Site is covered with trees and vegetation. Silver Creek passes through the Site. Silver Creek is designated as warm water habitat that may have various uses, including primary contact recreational use. Groundwater seepage has been observed along Silver Creek in several places.

U.S. EPA and RACER expect that RACER will investigate, and as necessary remediate, all releases of hazardous wastes or constituents at or from the Site under the guidelines established in this Agreement and subject to the terms, provisions and limitation set forth in the Consent Decree.

III. Definitions

Unless otherwise specified herein, terms used in this Agreement which are defined in RCRA, 42 U.S.C. §§ 6901-6922k, or in regulations promulgated under RCRA will have the definitions given to them in RCRA or in such regulations.

IV. Project Manager

U.S. EPA and RACER will each designate a Project Manager and notify each other in writing of the Project Manager selected within 14 days of the effective date of this Agreement. Each Project Manager will be responsible for overseeing the implementation of this Agreement. Whenever a Party changes Project Managers it will provide prompt written notice to the other Party.

V. Work to be Performed

RACER agrees to perform the actions specified in this section, in the manner and by the dates specified herein subject to the terms, provisions and limitations set forth in the Consent Decree. In the case of a conflict between this Agreement and the Consent Decree, the Consent Decree controls.

As contemplated by the Consent Decree, RACER may request and U.S. EPA may approve, in its sole discretion, changes to the RCRA facility boundary to allow portions of the Site to be redeveloped. U.S. EPA may approve such an adjustment based on factors including but not limited to: (i) information on historical uses and environmental data demonstrating that the portion of the Site proposed for sale or redevelopment was never used for any regulated activity or that no contamination is present on the portion of the Site to be released for sale or redevelopment; (ii) successful completion of the required remedy for contamination found on the portion of the Site to be released for sale or redevelopment; and (iii) approval of closure with restrictions or closure without restrictions for the portion of the Site to be released for sale or redevelopment.

RACER will perform the work undertaken pursuant to this Agreement in compliance with RCRA and other applicable Federal and State laws and their implementing regulations, and consistent with all relevant U.S. EPA guidance documents as appropriate to the Site. This guidance includes, but is not limited to, the Documentation of Environmental Indicator Determination Guidance and relevant portions of the Model Scopes of Work for RCRA Corrective Action and of U.S. EPA's Risk Assessment Guidance for Superfund.

1. RACER will complete activities necessary to identify and define the nature and extent of releases of hazardous waste and/or hazardous constituents at or from the Site. These activities include without limitation:
 - a. To the extent not already completed or otherwise determined by U.S. EPA to be unnecessary, provide to U.S. EPA, within 60 days of the effective date of this Agreement a brief Site History and Current Conditions Report ("Report") covering all areas of the Site. The Report will include any recent sampling data from the Site and a summary of the historic operations and physical setting of the area of the Site. The Report will describe conditions at any past or present locations at the Site for which RACER knows there was past treatment, storage, or disposal of hazardous waste or hazardous constituents. The report will also describe the nature and extent of any releases of hazardous waste and/or hazardous constituents at or from the Site which do not pose an unacceptable risk to human health or the environment, and provide the basis for those conclusions, including an evaluation of the risks. The report may be prepared in phases to provide timely support for the determinations and proposal described in Section V.2,

below. RACER will provide completed Environmental Indicator forms as part of the Current Conditions Report to document control of all current human exposures and migration of contaminated groundwater from the Site.

- b. To the extent not already completed or otherwise determined by U.S. EPA to be unnecessary, perform an investigation to identify the nature and extent of any releases of hazardous waste and/or hazardous constituents at or from the Soil Stockpile Area and the Southwest Area of the Site which may pose an unacceptable risk to human health or the environment, and provide a report to U.S. EPA.
 - c. In order to prepare for and provide the demonstrations required by Sections V.1.a and V.1.b., above, RACER will:
 - i. Determine appropriate risk screening criteria under current use scenarios and provide the basis and justification for the use of these criteria.
 - ii. Determine any current unacceptable risks to human health and the environment and describe why other identified risks are acceptable.
 - iii. Control any unacceptable current human exposures that are identified. This may include performing any corrective actions or other response measures (“Corrective Measures”) necessary to control current human exposures to contamination to within acceptable risk levels.
 - iv. Stabilize the migration of contaminated groundwater. This may include implementing any Corrective Measures necessary to stabilize the migration of contaminated groundwater.
 - v. Conduct groundwater monitoring to confirm that any contaminated groundwater remains within the original area of contamination.
 - vi. Prepare a report, either prior to or as part of the Current Conditions Report, that provides a description and justification for any interim actions performed to meet the requirements of this Section, including sampling documentation, construction completion documentation and/or confirmatory sampling results.
 - d. RACER may choose to proceed with remedial actions to limit site investigation or risk assessment activities in order to complete the work as defined in Section V.2 below.
2. Final Corrective Measures:
- a. RACER will propose to U.S. EPA final Corrective Measures necessary to protect human health and the environment from all current and future unacceptable risks due to releases of hazardous waste or hazardous constituents at or from the Site (the “Final Corrective Measures Proposal”). The proposal will describe all Corrective Measures implemented at the Site since the effective date of this Agreement. It will also include a description of all other final Corrective Measures evaluated by RACER, a detailed explanation of why the proposed final Corrective Measures were preferred by RACER, and cost estimates for the

final Corrective Measures evaluated. The proposal will also include a detailed schedule to construct and implement the final Corrective Measures, and to submit a Final Remedy Construction Completion Report. This schedule will provide that as much of the initial construction work as practicable will be completed within one year after U.S. EPA selects the final Corrective Measures and that all final Corrective Measures will be completed within a reasonable period of time to protect human health and the environment.

- b. As part of developing its proposals, RACER must propose appropriate risk screening criteria, cleanup objectives, and points of compliance under current and reasonably expected future land use scenarios and provide the basis and justification for these decisions.
 - c. U.S. EPA and RACER recognize that there may not be enough information available at this time to estimate a date for selection of Corrective Measures or implementation of Corrective Measures. Therefore, upon completion of RACER's Corrective Measures Proposal, a timeline for the selection of Corrective Measures and implementation of the selected Corrective Measures will be mutually agreed upon.
 - d. U.S. EPA may request supplemental information from RACER if it determines that the proposals and supporting information do not provide an adequate basis to select final Corrective Measures that will protect human health and the environment from the release of hazardous waste or hazardous constituents at or from the Site.
 - e. U.S. EPA will provide the public with an opportunity to review and comment on its proposed final Corrective Measures, including a detailed description and justification for the proposals (the "Statement of Basis"). Following the public comment period, U.S. EPA will select the final Corrective Measures and provide notification of its decision and rationale in a Final Decision and Response to Comments ("Final Decision").
 - f. Subject to the terms, provisions and limitations of the Consent Decree, RACER will implement the final Corrective Measures selected in the U.S. EPA's Final Decision according to the schedule therein and subject to the terms, provisions and limitation set forth in the Consent Decree.
3. Reporting and other requirements:
- a. RACER will maintain a publicly accessible repository for information regarding Site activities and conduct public outreach and involvement activities, consistent with the RCRA Public Participation Manual, as appropriate for the Site and as directed and in consultation with U.S. EPA.
 - b. RACER will provide annual progress reports to U.S. EPA by the 15th day of the month following the effective date of this Agreement. The report will list work performed to date, data collected, problems encountered, project schedule, and percent project completed.

- c. The Parties will communicate frequently and in good faith to assure successful completion of the requirements of this Agreement, and will meet on at least a semi-annual basis to discuss the work proposed and performed under this Agreement.
- d. RACER will provide a Final Remedy Construction Completion Report documenting all work that it has performed pursuant to the schedule in U.S. EPA's Final Decision.
- e. If ongoing monitoring or operation and maintenance are required after construction of the selected final Corrective Measures, RACER will include an operations and maintenance plan in the Final Remedy Construction Completion Report. RACER will revise and resubmit the Report in response to U.S. EPA's written comments, if any, by the dates U.S. EPA specifies. Upon U.S. EPA's written approval, RACER will implement the approved operation and maintenance plan according to the schedule and provisions contained therein.
- f. Any risk assessments conducted by RACER must estimate human health and ecological risk under reasonable maximum exposure for both current and reasonably expected future land use scenarios. Risk assessments will be conducted in accordance with the Risk Assessment Guidance for Superfund ("RAGS") or other appropriate U.S. EPA guidance. RACER will use appropriate, conservative screening values when screening to determine whether further investigation is required. Appropriate screening values may include those derived from Federal Maximum Contaminant Levels, U.S. EPA Region 9 Preliminary Remediation Goals, U.S. EPA Region 5 Ecological Screening Levels, U.S. EPA Region 5 Risk Based Screening Levels, U.S. EPA Region 3 Risk Based Concentration Table, RAGS or appropriate Ohio EPA Cleanup Criteria.
- g. All sampling and analysis conducted under this Agreement will be performed in accordance with the Region 5 RCRA Quality Assurance Project Plan Policy (April 1998) as appropriate for the site, and be sufficient to identify and characterize the nature and extent of all releases. U.S. EPA may audit laboratories selected by RACER or require RACER to purchase and have analyzed any Performance Evaluation ("PE") samples selected by U.S. EPA which are compounds of concern. RACER will notify U.S. EPA in writing at least 14 days before beginning each separate phase of field work performed under this Agreement. At the request of U.S. EPA, RACER will provide or allow U.S. EPA or its authorized representative to take split or duplicate samples of all samples collected by RACER under this Agreement.
- h. Upon reasonable notice, and at reasonable times, U.S. EPA, its contractors, employees, and any designated U.S. EPA representatives may enter the Site to review RACER's progress in carrying out the terms of this Agreement; conduct tests, sampling, or monitoring as U.S. EPA deems necessary; and verify the reports and data RACER submits to U.S. EPA. RACER will permit such persons to inspect and copy all non-privileged photographs and documents, including all sampling and monitoring data, that pertain to work undertaken under this Agreement and that are within the possession or under the control of RACER or its contractors or consultants. RACER may request split samples taken by U.S. EPA. If RACER must go beyond the Site's boundary to perform work required by this Agreement, RACER will use reasonable efforts to obtain the necessary access agreements from the present owner(s) of such property within 30 days

after RACER knows of the need for access. Any such access agreement must provide for access by U.S. EPA and its representatives. RACER will submit a copy of any access agreement to U.S. EPA's Project Manager. If it does not obtain agreements for access within 60 days, RACER will notify U.S. EPA in writing within 14 additional days of both the efforts undertaken to obtain access and the failure to obtain access agreements. U.S. EPA may, at its discretion, assist RACER in obtaining access.

VI. Record Preservation

RACER will retain, during the pendency of this Agreement all data and all final documents now in its possession or control or which come into its possession or control which relate to this Agreement. RACER will notify U.S. EPA in writing 90 days before destroying any such records, and provide U.S. EPA the opportunity to take possession of any such non-privileged documents. RACER's notice will refer to the effective date, caption, and docket number of this Agreement and will be addressed to:

Director
Land and Chemicals Division
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

RACER will also promptly provide U.S. EPA's Project Manager a copy of any such notice.

RACER further agrees that within 30 days of retaining or employing any agent, consultant, or contractor ("Agents") to carry out the terms of this Agreement, RACER will enter into an agreement with the Agents to provide RACER a copy of all data and final non-privileged documents produced under the Agreement.

RACER agrees that it will not assert any privilege claim concerning any data developed to prepare any reports or conduct any investigations or other actions taken under the Agreement.

VII. Modification, Termination and Satisfaction.

This Agreement may be modified by written, mutual agreement of the Parties. The Project Managers may agree in writing to extend any deadline in this Agreement. Any change to the Remediation Cost Estimate Scope of Work prepared for the Site in the annual cleanup budget process set out in the Consent Decree that has been approved by U.S. EPA, and/or the current budget for the Site that has been approved by U.S. EPA shall be considered a modification to this agreement that has been approved by the Parties and will be effective on the date of U.S. EPA's approval of the Remediation Cost Estimate Scope of Work and/or current budget.

Either Party may unilaterally terminate this Agreement upon written notice to the other Party.

RACER may request that U.S. EPA issue a determination that RACER has met the corrective action cleanup objectives for the Site or a portion of the Site. RACER will submit documentation that it has achieved the objectives and U.S. EPA will respond in writing indicating whether RACER has completed RCRA corrective action. If U.S. EPA agrees that a RCRA corrective action is complete, it will issue a "No Further Action" determination for all or a portion of the Site.

The provisions of the Agreement will be satisfied upon RACER's and U.S. EPA's execution of an "Acknowledgment of Termination and Agreement on Record Preservation and Reservation of Rights" ("Acknowledgement"). RACER's execution of the Acknowledgment will affirm its continuing obligation to maintain any necessary institutional controls or other long terms measures, and to recognize the Parties' reservation of rights as required in Section VIII.

VIII. Reservation of Rights

The Parties reserve any and all rights, remedies, authorities or defenses that they respectively have under law. Nothing in this Agreement limits or affects the authority or ability of either Party to take any action authorized by law. Nothing in this Agreement creates any legal rights, claims or defenses in either Party or by or for any third Party. Nothing in this Agreement relieves RACER from complying with applicable federal, state and local laws.


This Agreement does not limit or affect the rights of the Parties against any Third Party, nor does it limit the rights of Third Parties. The Parties agree that this Agreement does not constitute any decision on preauthorization of funds under §111(a)(2) of CERCLA.

IX. Effective Date

This Agreement is effective on the date the last Party signs.

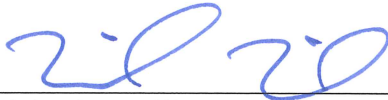
IT IS SO AGREED:

DATE: 9/29/11

BY: 
Margaret Guerriero, Director
Land and Chemicals Division
U.S. Environmental Protection Agency
Region 5

DATE: 9/21/11

REVITALIZING AUTO COMMUNITIES
ENVIRONMENTAL RESPONSE TRUST

BY: 
Michael O. Hill
Chief Operating Officer and General Counsel